

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Travis Burt

Plaintiff(s)

vs.

Safeco Insurance Company of America,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 40- 01237

Submitted By: A. Camden Lewis
 Address: 1513 Hampton Street/PO Box 11208
 Columbia, SC 29211-1208

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 Other:
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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Fraud/Bad Faith (150)
<input type="checkbox"/> Failure to Deliver/Warranty (160)
<input type="checkbox"/> Employment Discrim (170)
<input type="checkbox"/> Employment (180)
<input type="checkbox"/> Other (199) _____ | Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____-NI-_____
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) _____ | Torts - Personal Injury
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Assault/Battery (370)
<input type="checkbox"/> Slander/Libel (380)
<input type="checkbox"/> Other (399) _____ | Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) _____ |
| Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) _____ | Administrative Law/Relief
<input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture—Consent Order (850)
<input type="checkbox"/> Other (899) _____ | Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Other (799) _____ | Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) _____ |
| Special/Complex /Other
<input type="checkbox"/> Environmental (600) <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Medical (620) <input type="checkbox"/> Out-of State Depositions (650)
<input checked="" type="checkbox"/> Other (699) _____ <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Pre-Suit Discovery (670)
<input type="checkbox"/> Permanent Restraining Order (680) | | | |

Submitting Party Signature: Date: 3/3/2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Travis Burt,

Plaintiff,

v.

Safeco Insurance Company
of America,

Defendants.

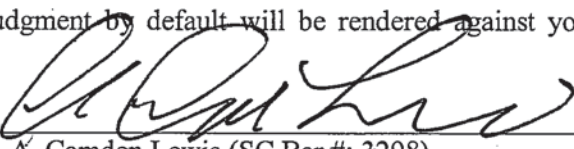
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-40- 01237

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at their offices, 1513 Hampton Street, Post Office Box 11208, Columbia, South Carolina 29211, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


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J. Ryan Heiskell (SC Bar #: ****)

LEWIS BABCOCK L.L.P.

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Columbia, SC
March 3, 2017

Attorneys for Plaintiff

RICHLAND COUNTY
FILED
2017 MAR -3 PM 3:32
JANETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Travis Burt,)
Plaintiff,)
v.)
Safeco Insurance Company)
of America,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2017-CP-40-01237

COMPLAINT

Jury Trial Demanded

RICHLAND COUNTY
FILED
2017 MAR -3 PM 3:32
JEANNETTE W. MCORRIDE
C.C.P. & G.S.

Travis Burt ("Plaintiff"), by and through his undersigned counsel, brings this Complaint against Safeco Insurance Company of America ("Defendant") and alleges the following:

PARTIES

1. Travis Burt is a citizen and resident of Richland County residing at 8 Lavington Court, Columbia, SC 29209.
2. Safeco Insurance Company is a corporation organized and existing under the laws of Oregon, which provides insurance policies to South Carolina residents, including those residing in Richland County.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action and the parties pursuant to S.C. Code Ann. § 14-1-80.
4. Venue is proper in Richland County pursuant to S.C. Code Ann. § 15-7-70.

FACTS

5. Plaintiff's home is located in Richland County at 8 Lavington Court in Columbia, SC.

6. Defendant insures Plaintiff's home pursuant to a homeowners' policy effective through January 9, 2016.

7. On October 4, 2015, the State of South Carolina experienced hours of intense rainfall as a result of the convergence of two powerful weather systems.

8. Defendant has refused to make payment to Plaintiff under the homeowners' policy. In its rejection of coverage, Defendant hides behind the following allegedly "exclusionary language":

10. Water Damage, meaning:

- a. (1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, storm surge or spray from any of these, whether or not driven by wind, including hurricane or similar storm; or
(2) release of water held by a dam, levee, dike or by a water or flood control device or structure;
- b. water below the surface of the ground, including that which exerts pressure on, or seeps or leaks through a building, wall, bulkhead, sidewalk, driveway, foundation, swimming pool, hot tub or spa, including their filtration and circulation systems, or other structure;
- c. water which escapes or overflows from sewers or drains located off the residence premises;
- d. water which escapes or overflows from drains or related plumbing appliances on the residence premises. **However, this exclusion does not apply to overflow and escape cause by malfunction on the residence premises, or obstruction on the residence premises, of a drain or plumbing appliance on the residence premises;** or
- e. water which escapes or overflows or discharges, for any reason, from within a sump pump, sump pumpwell or any other system designed to remove water which is drained from the foundation area. Water includes any water borne materials.

This exclusion applies whether the water damage is caused by or resulting from human or animal forces or any act of nature. Direct loss by fire, explosion or theft resulting from water damage is covered.

9. This Exclusion, however, does not apply to the circumstances leading to Plaintiff's losses to his home and payment should be made pursuant to the terms of the homeowner's policy in effect. The damage to the home was a direct result of a malfunctioning drain located on the Plaintiffs property. This drain caused and/or contributed to the damage to Plaintiff's home and was not the result of a flood as defined within the language of the Exclusion for water damage. *See* subparagraph d of the definition.

10. In addition, no one from Safeco ever came to inspect the drain or the Plaintiff's property damage.

FOR A FIRST CAUSE OF ACTION
(Bad Faith Refusal to Pay)

11. Paragraphs 1 through 10 above are reiterated and re-alleged as though set forth verbatim.

12. At the time Plaintiff's home was damaged, Plaintiff was insured by Defendant under a homeowners' policy effective through January 9, 2016. A copy of this policy is attached as exhibit A.

13. This homeowners' policy is a mutually binding contract of insurance between Plaintiff and Defendant.

14. Plaintiff's home sustained severe damage due to the malfunction of a drain on Plaintiff's property.

15. The damage to Plaintiff's home was directly and proximately caused by the malfunction of the drain on the Plaintiff's property.

16. To date, Defendant has refused to pay benefits to Plaintiff due under the homeowners' policy to cover the damages to Plaintiff's home.

17. In addition, Defendant refused to inspect the Plaintiff's property following the claim being filed by the Plaintiff.

18. Defendant's repeated refusal to pay benefits due under the contract, without regard to the severity of the damage sustained or the circumstances under which the damages were inflicted, constitutes a breach of the implied covenant of good faith and fair dealing inherent in every South Carolina contract, including the contract at issue.

19. Defendant's unreasonable and bad faith breach of the implied covenant of good faith and fair dealing damaged Plaintiff by denying him payments with which to repair the damage to his home.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

20. Paragraphs 1 through 19 above are reiterated and re-alleged as though set forth verbatim.

21. Plaintiff and Defendant entered into a contract by which Defendant agreed to provide insurance coverage on Plaintiff's residence.

22. Defendant breached the contract the parties entered into by refusing to pay for the damages Plaintiff's residence sustained, described above.

23. As a result of Defendant's breach of the terms of the contract between the parties, Plaintiff has been damaged and continues to suffer.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract with Fraudulent Intent)

24. Paragraphs 1 through 23 above are reiterated and re-alleged as though set forth verbatim.

25. Plaintiff and Defendant entered into a contract by which Defendant agreed to provide insurance coverage on Plaintiff's residence.

26. Defendant breached the contract the parties entered into by refusing to pay for the damages Plaintiff's residence sustained, described above.

27. Defendant's breach of the contract was accompanied by a fraudulent act in that its denial of insurance coverage was dishonesty in fact and unfair dealing in that the Defendant refused to inspect the Plaintiff's property following his claim.

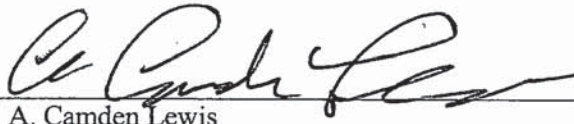
28. As a result of Defendant's breach of the terms of the contract with fraudulent intent, Plaintiff has been damaged and continues to suffer.

WHEREFORE, Plaintiff Travis Burt respectfully requests that judgment be entered in his favor against Defendant as follows:

1. Actual damages according to proof presented at trial;
2. Punitive damages as determined by the trier of fact;
3. Pre-judgment interest;
4. Attorneys' fees and costs; &
5. Such other and further relief as this Court deems just and proper.

JURY TRIAL DEMANDED

SIGNATURE BLOCK ON FOLLOWING PAGE



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Columbia, SC
March 3, 2017

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